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BACKGROUND DOCUMENT

AMENDMENTS TO
REGULATIONS 310 CMR 7.00
FOR THE CONTROL OF AIR POLLUTION
IN THE

BERKSHIRE AIR POLLUTION CONTROL DISTRICT
PIONEER VALLEY AIR POLLUTION CONTROL DISTRICT
MERRIMACK VALLEY AIR POLLUTION CONTROL DISTRICT
METROPOLITAN BOSTON AIR POLLUTION CONTROL DISTRICT
CENTRAL MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT
SOUTHEASTERN MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT

STATUTORY AUTHORITY
M.G.L. c. 111, Sections 142A through 142N

FEBRUARY 2004



I. BACKGROUND

Massachusetts General Laws, Chapter 111, Sections 142A-142N is the enabling legislation that gives the Department the authority to adopt regulations to prevent, control or abate conditions of air pollution, to protect public health and welfare. The Commonwealth's regulations for the control of air pollution are promulgated at 310 CMR 7.00 "Air Pollution Control" and 310 CMR 60 "Motor Vehicle Inspection and Maintenance".

II. DISCUSSION

The amendments, which the Department is proposing to adopt and submit as a State Implementation Plan (SIP) revision, are part of the effort to attain and maintain the health and welfare based National Ambient Air Quality Standards (NAAQS) for criteria pollutants. Several amendments delete unnecessary definitions, expired regulations or duplicative requirements. Most of the amendments update citations, correct typos, modify text to clarify intent, or reorganize subparagraphs and add headings for easier readability. For example, the Department is deleting the outdated definitions of the Inspection and Maintenance Program, now located at 310 CMR 60.02; eliminating Table 1 at 310 CMR 7.02 since it causes confusion; deleting 310 CMR 7.03(14) Dry Cleaning Operations, 310 CMR 7.03 (20) Printers, and 310 CMR 7.18(27) Coating Mixing Tanks, as redundant. The key amendments in the package address the impacts of federal regulations on Massachusetts. Specific changes include:

- Presumptive approval of Limited Plan Applications (LPAs)
- Appendix A language
- Appendix C modifications
- Addressing EPA concerns with recently published 310 CMR 7.06(1)(c)
- Requirements for new and existing automotive refinish facilities
- Amend Department regulations to incorporate current United States Environmental Protection Agency (EPA) NESHAP requirements for testing materials for Asbestos
- Adopt 310 CMR 7.54 Large Combustion Units in response to EPA's recent PSD amendment

These amendments are discussed in greater detail below. A complete listing of the amendments is in the attached Proposed Amendments document.

Presumptive approval of Limited Plan Applications (LPAs)

The Department proposes to revise the plan approval process in 310 CMR 7.02(1) by adding a new section, 310 CMR 7.02(1)(b)2 Presumptive Plan Approvals. A limited plan application (LPA) will receive presumptive approval if the Department does not notify the applicant otherwise within 60 days. Approval may be denied due to administrative or technical deficiencies. The Department may also require a written approval. The purpose of this change is to streamline the approval process for LPAs, which typically are simpler and less complicated than comprehensive plan applications (CPAs) to review/approve. Presumptive approvals will reduce paperwork and, in many cases, the time needed for an applicant to receive an approval. Under this proposal the LPA must have a professional engineer's (PE) stamp to demonstrate that

a trained engineer prepared the LPA.

The Department also proposes to eliminate the exemption for operating permit facilities from the requirement to submit LPAs. This amendment will ensure that new or modified emission units in operating permit facilities meet BACT requirements.

310 CMR 7.00: Appendix A:

The proposed revision to Appendix A(6), Emission Offsets, and Non-attainment Review is intended to make the section more consistent with federal requirements.

310 CMR 7.00: Appendix C Modifications:

The purpose of the proposed amendments to 310 CMR 7.00:Appendix C, Operating Permit and Compliance Program, is to update and clarify the requirements, as well as improve consistency with the federal requirements.

Amend 310 CMR 7.00 Appendix C(1), Definitions, by updating the definitions of Affected State and Major Source in 310 CMR 7.00 Appendix C (1). These changes are necessary due to changes in the federal regulations.

Simplify the requirements in Appendix C(8)to be consistent with federal requirements by clarifying the language in Appendix C(8)(c) describing when a modification or other change in a facility, which requires a significant modification to the operating permit, may be operated prior to final EPA action.

Update the requirements in Appendix C(9)(c)2 to operate continuous emission monitors (CEM).

Address EPA concerns with recently published 310 CMR 7.06 (1)(c):

The following is a summary of the significant changes proposed for 310 CMR 7.06(1)(c). The requirements for a Plan of Good Operating Practices are more clearly delineated. The plan must provide for:

- Third party combustion expert to develop the plan with recommendations to minimize opacity;
- Documentation of the need for different opacity limits and a proposal for specific opacity limits;
- How improved technology, operating and maintenance procedures will minimize emissions;
- Requirements for corrective action procedures and return to compliance; and
- Record keeping and monitoring requirements

A maximum average opacity limit of 27% is set for startup, shutdown, soot blowing and other specified operating conditions.

The Department must approve Plans of Good Operating Practice.

A formal approval process will make the limits and any terms and conditions of the plan enforceable.

The terms and conditions of an approved Plan are required to be put in the Operating Permit. This will include the visible emission limits for each operating event for which the facility seeks to establish a limit greater than 15 percent, but not to exceed 27 percent. Sufficient conditions to make the limits enforceable such as monitoring, record keeping, reporting and any other conditions as appropriate will also be incorporated into Operating Permits.

Requirements for new and existing surface coating facilities:

Amendments to the requirements for automotive refinishing operations are proposed in 310 CMR 7.03(16) and 310 CMR 7.18(28). The proposed amendments simplify recordkeeping requirements, add language to 310 CMR 7.03(16) to allow the approval of new, innovative technology, and establish a new limit for surface preparation products formulated to clean new plastic parts.

In addition to the changes described above, the following amendments, which may affect an automotive refinishing operation, are proposed. It is proposed to revise 310 CMR 7.03(1) to add facility-wide limits on emissions of hazardous air pollutant (HAP) of 10 tons per year of any one HAP and 25 tons per year of combined HAPs. This revision will provide facilities operating under 310 CMR 7.03 with an enforceable limit on their potential to emit HAPs.

It is also proposed to revise 310 CMR 7.24 to modify the inspection requirements for organic material storage tanks. Currently, an internal floating roof with a single seal must be inspected every ten years, while an internal floating roof equipped with a double seal must be inspected every five years. The difference in inspection cycles was adopted due to a misinterpretation of federal requirements. Since there is no technical reason to inspect double seal versions twice as often as single seal versions of floating roofs, it is proposed that internal floating roofs of either type be inspected at least every ten years.

Amend Department regulations to incorporate current United States Environmental Protection Agency (EPA) NESHAP requirements for testing materials for Asbestos

The Massachusetts Department of Environmental Protection (DEP) proposes to amend 310 CMR 7.00 definitions pertaining to the handling of Asbestos and correct typos at 310 CMR 7.15. These amendments incorporate current United States Environmental Protection Agency (EPA) requirements in the National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to testing a material to determine if it contains Asbestos. These testing protocols reflect current laboratory practices in the industry. The proposed amendments also include changes to certain regulatory definitions to increase clarity and to correct typographical errors.

In 1990, EPA added several new aspects to the Asbestos NESHAP, including amendments to key provisions and regulatory terminology. Most importantly, EPA revised its definitions for friable asbestos material and non-friable asbestos-containing material to encompass asbestos-containing material that is greater than one percent asbestos by *area* rather than greater than one percent asbestos by *weight*. To date, DEP has not amended its regulations to reflect those changes. DEP's current regulations continue to reflect EPA's former "one percent asbestos by weight" test, although DEP's operational practice has been to use EPA's one percent asbestos by area for bulk samples, which is the current laboratory practice in the industry.

DEP recently reviewed asbestos removal practices in the industry, asbestos testing methodologies and laboratory practices. DEP's review included an analysis of the various methodologies available for testing material to determine if it contains asbestos. DEP concluded that EPA's Polarized Light Microscopy (PLM) area test method, published after EPA's 1990 Asbestos NESHAP amendment, is the method most widely used by environmental laboratories in measuring asbestos content in bulk samples. Therefore, DEP is proposing to amend 310 CMR 7.00 to require the regulated community to use EPA's approved testing methodologies. These amendments would render Massachusetts' Asbestos regulations consistent with EPA's testing methodologies, as reflected in the Asbestos NESHAP.

Adopt 310 CMR 7.54 U Large Combustion Emission Unit in response to EPA's recent PSD amendments

EPA adopted amendments to the Prevention of Significant Deterioration (PSD - 40 CFR 52.21) regulation that had the effect of relaxing the applicability to 310 CMR 7.02(5) and complicating applicability determinations for certain categories of major sources to PSD review. In order to assure that at least the largest of these facilities will still be required to receive Department approval, it is proposed to adopt 310 CMR 7.54 U Large Combustion Emission Units. The proposed regulation reinstates the requirement that certain modifications at Large Combustion Emission Units be approved under 310 CMR 7.02(5). These are the emission units that generally have the highest emissions. The amendments will apply to large municipal waste combustors and large boilers, including electric utility generating units.

Effective July 1, 1982, the Department became the implementing agency for the PSD program in Massachusetts through a Memorandum of Agreement (MOA). The recent amendments to the PSD program were effective March 3, 2003 for states like Massachusetts with delegated PSD programs. The Department returned implementation of the PSD program to EPA on February 27, 2003.

States that implement PSD through regulations that are part of their State Implementation Plans (SIPs) have three years to adopt these same, or equivalent, amendments. Similar changes are required to non-attainment new source review (NSR) regulations within three years.

The Department recommends a two-phase approach to address the needed regulation changes. During phase I the proposed regulations (310 CMR 7.54) will be adopted. This will assure the largest facilities that were exempted from the new federal PSD program will still be subject to review under state NSR regulations.

During phase II the Department will propose to adopt its own PSD regulations and amend its non-attainment NSR regulation (310 CMR 7.00: Appendix A). During this phase, the Department will work through STAPPA, and with other states, to ensure the regulations are equivalent to EPA requirements. This phase will be completed within the three-year timeframe.

III. ECONOMIC IMPACTS

Most of the proposed amendments will have little if any economic impact because they simply streamline, correct, or clarify existing regulations, and bring the Department's regulations into line with the federal requirements and current industry practice in the case of the proposed changes to the asbestos related definitions.

Changing the Limited Plan Application to a presumptive approval will have a have a favorable impact for facilities since they will generally be able to proceed with proposed changes at the facility more quickly. It will also save the Department time preparing individual approval letters for each application.

Changing the inspection frequency for large tanks from 5 years to 10 years will save the gasoline marketing industry time and the cost of draining and purging the tanks.

IV. ENVIRONMENTAL IMPACTS

The primary impact of these amendments will be to clarify, reduce inconsistency/duplication, or streamline the requirements contained in the existing regulations. Therefore, the proposed changes will not have a significant environmental impact.

V. IMPACTS ON OTHER PROGRAMS

Toxics Use Reduction

Implementation of toxics use reduction is a Department-wide priority. Toxics use reduction is defined as in-plant practices that reduce or eliminate the total mass of contaminants discharged to the environment. These amendments are not expected to impact on that effort.

Air Toxics

In the past, air pollution control programs have focused on the six criteria pollutants: particulate matter, nitrogen oxides, sulfur dioxide, ozone, carbon monoxide, and lead. Recently concern has been raised over the components of air pollution that are not specifically regulated by programs developed to control criteria pollutants. These compounds are collectively known as air toxics. The health effects of air toxics are wide ranging and can vary from long-term carcinogenic effects to short-term adverse health effects.

The CAA requires the EPA to promulgate control strategies for sources of toxic air emissions. The Department intends to implement those standards as promulgated by the EPA. Until that time, the Department will generally control air toxics through programs aimed at controlling the traditional criteria pollutants. In so far as these proposed amendments further limit emissions of

CO, VOC and NO_x, they also limit emissions of air toxics.

Impacts on Cities and Towns (Proposition 2 1/2)

Pursuant to Executive Order 145, the Department must assess the fiscal impact of new regulations on the commonwealth's municipalities. The Executive Order was issued in response to Proposition 2 1/2. MGL c. 29 § 27C(a) that requires the state to reimburse municipalities for costs incurred as a consequence of new state laws and regulations.

Proposition 2 1/2 requires the state to reimburse the cities and towns for the additional cost incurred by state regulations. Since these regulations will not burden municipalities with additional costs, reimbursement pursuant to Proposition 2 1/2 is not necessary.

MEPA

This proposed action is "categorically exempt" from the "Regulations Governing the Preparation of Environmental Impact Reports", 301 CMR 11.00, because the proposed amendments will result in an overall increase in emission controls. All reasonable measures have been taken to minimize adverse impacts.

Agricultural Impacts

Massachusetts General Laws, Chapter 30A, Section 18 requires state agencies to evaluate the impact of proposed programs on agriculture within the Commonwealth. As the proposed amendments affect only industrial facilities, the Department has determined that the proposed regulations will have no adverse impact on agriculture in Massachusetts. The only impact on agriculture will be beneficial, as the program will help Massachusetts to attain the NAAQS for ozone, thus lowering crop damage attributable to high ozone concentrations in the summer.

VI IMPLEMENTATION

These amendments are not expected to add significantly to the Department's workload since the majority of the changes clarify or correct the existing regulations. In general they clarify existing requirements. Where they add additional requirements, the amendments generally upgrade the enforceability of the regulations.

VI PUBLIC PARTICIPATION

As required by M.G.L. c 30A, the Department gives notice and provides the opportunity to review background and technical information at least 21 days prior to proposing the regulation amendments at a public hearing. To assure more adequate notice for processing a rule as an amendment to the SIP, formal notice will be issued 30 days before the public hearings which will be held: January 13, 2004 in Springfield and January 14, 2004 in Boston. The hearing record will be kept open until the close of business on January 23, 2004.

